

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

SUCCESSFACTORS, INC., )  
Plaintiff(s), ) No. C08-1376 CW (BZ)  
v. )  
SOFTSCAPE, INC., ) **ORDER APPOINTING SPECIAL  
MASTER FOR DISCOVERY**  
Defendant(s). )  
\_\_\_\_\_  
)

Under Federal Rule of Civil Procedure 53 (a) and (b), the parties have consented to the appointment of a Special Master to act as a discovery referee. The Court finds that consideration of fairness, the prevention of undue delay and the amount of judicial resources expended adjudicating discovery disputes in this case constitute "exceptional circumstances" which require the appointment of a special master to oversee discovery. See Harmston v. City and Country of San Francisco, 2007 WL 3306526, \*9 (N.D. Cal); National Ass'n of Radiation Survivors v. Turnage, 115 F.R.D. 543, 560 (N.D. Cal. 1987). Pursuant to Federal Rule of Civil Procedure 53 (b)(3), by August 22, 2008 the Special Master is directed

1 to file an declaration under 28 U.S.C. § 455 stating that  
2 there is no ground for disqualification.

3 **THEREFORE, IT IS HEREBY ORDERED THAT**, pursuant to Federal  
4 Rule of Civil Procedure 53, effective upon the filing of his  
5 conflict declaration, the Court appoints Jack Russo as the  
6 Special Master for discovery in this case.

7 1. Scope of Duties. The Special Master shall adjudicate  
8 all pretrial discovery disputes in this case, including  
9 disputes arising during the course of depositions.

10 2. Scope of Authority. The Special Master shall have all  
11 the authority provided in Federal Rule of Civil Procedure  
12 53(c), including, but not limited to, the authority to set the  
13 date, time, and place for all hearings determined by the  
14 Special Master to be necessary; to direct the issuance of  
15 subpoenas; to make rulings on objections or otherwise resolve  
16 disputes arising during the course of depositions; to preside  
17 over hearings (whether telephonic or in-person); to take  
18 evidence in connection with discovery disputes; to award fee  
19 allocations and non-contempt sanctions provided by Federal  
20 Rules of Civil Procedure 37 and 45; and to recommend contempt  
21 sanctions. Any motion pursuant to Federal Rule of Civil  
22 Procedure 37 or Civil Local Rule 37-1 for sanctions for  
23 violations of the Special Master's orders shall be decided by  
24 the Special Master.

25 3. Procedures for Briefing Submitted to Special Master.  
26 The Special Master may resolve disputes presented orally, in  
27 person or by telephone, in a letter brief, or in formal  
28 motions. In the case of discovery disputes that are to be

1 resolved by letter brief or written motions, all papers will  
2 be submitted directly to the Special Master by email with a  
3 courtesy copy by United States Mail or overnight courier, as  
4 directed by the Special Master. Briefing schedules will be  
5 determined by the Special Master.

6       4. Discovery Disputes - Meet and Confer Required. In the  
7 event of a discovery dispute, the parties shall first meet and  
8 confer in good faith to attempt to resolve the dispute. In  
9 the event the parties are not able to reach an agreement, the  
10 dispute will be resolved by the Special Master. The Special  
11 Master shall devise procedures for the parties to follow in  
12 seeking his intervention.

13       5. Preservation of Record. Pursuant to Federal Rule of  
14 Civil Procedure 53(b)(2)(c), the Special Master shall maintain  
15 files consisting of all documents submitted by the parties and  
16 any written orders, findings, and/or recommendations. Any  
17 order issued by the Special Master shall be emailed to the  
18 parties. Such emailing shall fulfill the Special Master's  
19 duty to serve the order on the parties. In addition, any  
20 order issued by the Special Master shall be filed with the  
21 Court via Electronic Case Filing (ECF) in a notice of ruling  
22 by the moving party. Any records of the Special Master's  
23 activities other than written orders, findings, and/or  
24 recommendations shall be filed in accordance with paragraph  
25 6.(a) herein.

26       6. Action on Special Master's Orders, Reports, or  
27 Recommendations.

28           (a) Pursuant to Federal Rule of Civil Procedure

1 53(b)(2)(D), the procedure described in paragraphs 6(b) and  
2 6(c) herein shall govern any action on the Special Master's  
3 orders, reports and/or recommendations.

4 (b) Time Limits for Review. Any party wishing to file  
5 objections to the Special Master's orders, reports and/or  
6 recommendations must file such objection with the Court within  
7 ten court days from the day the Special Master's order, report  
8 and/or recommendation is filed. Review of the Special  
9 Master's orders will be subject to the same procedures as  
10 review of orders of a Magistrate Judge, except as otherwise  
11 provided herein. See Civil Local Rule 72-2.

12 (c) Filing the Record for Review. The party filing the  
13 objection shall submit with such objection any record  
14 necessary for the Court to review the Special Master's order,  
15 report, and/or recommendation, including any transcripts of  
16 proceedings before the Special Master and any documents  
17 submitted by the parties in connection with the Special  
18 Master's order, report, and/or recommendation. Failure to  
19 provide the record shall constitute grounds for the Court to  
20 overrule the objection or deny the motion.

21 7. Ex Parte Communications. To facilitate the  
22 fulfillment of the duties hereunder, the Special Master may  
23 communicate ex parte to the Court to the extent that the  
24 Special Master deems necessary and appropriate. In addition,  
25 the Special Master may have ex parte communications with a  
26 party but such communications shall be limited to  
27 administrative matters such as scheduling hearings, telephone  
28 calls or briefing, if such arrangements cannot be made in a

1 timely manner by contacting the Special Master's  
2 administrative assistant.

3       8. Compensation. The Special Master shall be compensated  
4 at the normal hourly rate for his or her services. The cost  
5 of the Special Master's compensation shall be allocated at the  
6 Special Master's discretion, including allocation of the cost  
7 of the Special Master's compensation to the non-prevailing  
8 party upon the resolution of a dispute.

9       9. Diligence. Pursuant to Federal Rule of Civil  
10 Procedure 53(b)(2), the Court hereby directs the Special  
11 Master to proceed with all reasonable diligence in performing  
12 these duties.

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14       The parties consent to the appointment of a special  
15 master to act as discovery referee.

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Dated: \_\_\_\_\_, 2008

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Counsel for plaintiff

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Dated: \_\_\_\_\_, 2008

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Counsel for defendant

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**IT IS SO ORDERED.**



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Dated: September 2, 2008

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Claudia Wilken  
United States District Judge

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